IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1977

Supreme Court, U. S.
FILED
JUN 10 1978
MICHAEL RODAK, JR., CLERK

NO. 77-1615

Paul Cantwell,
Glen Howard
and Rozelle Boyd,

Petitioners,

vs.

William H. Hudnut, III,
Mayor of Indianapolis,
Joyce Brinkman, George
Tintera, Alan Kimbell
and Paula Hart, Members
of the Indianapolis-
Marion County City-
County Council,

Respondents.

# RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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RESPONDENTS' BRIEF IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI

The Petitioners correctly state that the Court of Appeals reversed the District Court's judgment by a vote of 2 to 1, and that a petition for a rehearing

in banc was filed, but fail to state that on February 15, 1978, all of the active members of the Seventh Circuit Court of Appeals voted 6 to 2 to deny the petition for rehearing.

Petitioners throughout their petition refer to "findings" or "conclusions" of the District Court (P.[1] 6, 8, 10, 15 and 16). The Petitioners have attached a copy of the District Court's opinion (P. App. II, A44-99). The case was tried upon a stipulation of facts. It is attached as Appendix[2] I to this brief, without the voluminous exhibits. Respondents have lodged with the Clerk of the Court a copy of the stipulation with all of the exhibits attached. Since the facts were stipulated, this Court may make its own determination as to the legal conclusions and inferences to be drawn from them.[3]

## QUESTIONS PRESENTED

There is really only one question before the Court - namely, whether the provision of the 1969 Act, as amended in

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(1) "P" refers to the Petition for Writ of Certiorari.

(2) Each Appendix to this brief is hereinafter referred to as "App."

(3) See United States v. Mississippi Valley Generating Co., 364 U.S. 520, 525 (1961).



1971 (sometimes called the "Uni-Gov Act"), placing the four councilmen elected at-large by the voters of the consolidated city upon the police and fire special service district councils, violates the Equal Protection Clause of the Fourteenth Amendment.

The Petitioners have broken the single question into three questions.

Petitioners assume in the statement of the first question (P. 2) three conclusions stated as facts which are not supported by the stipulated facts or the statutes:

(a) It assumes that the special service district councils have "general governmental powers." However, the powers which the special service district councils have are limited to approval of the budget and making of appropriations and tax levies for the districts (IC 18-4-4-5; App. III, A42). Furthermore, their budgets are prepared by the Director of Public Safety (IC 18-4-12-11 and 37; App. III, A46) and are subject to approval by the city-county council and veto by the Mayor (IC 18-4-4-4 and 4.5; 18-4-5-2(c); App. III, A45-46)

(b) It assumes that there is nearly a "40%" dilution through votes of non-residents. The dilution in representation on the special service district councils is only "8%." (See pp. 23 to 25, infra.)

(c) It assumes that the non-residents "are neither taxed nor served" by the units (the special service districts). Neither statement is true. (See pp. 21 to 23, infra, and App. I, A11-12.)

The second question (P. 2) assumes facts which are not in accord with the provisions of the statute.

(a) It assumes that the special service district councils have "general governmental powers." As noted in (a) above, the powers are very limited.

(b) It assumes that the special service district councils are "legislatures." The Indiana statute does not so describe such councils and it is clear from the statute that any legislative power is limited. (See [a] above under the first question.)

The third question is not really a question. It is an argument, but it assumes two things which are not true:

(a) It assumes relief was denied "because granting it may result in exacerbating another such denial." A reading of the opinion of the Seventh Circuit Court of Appeals clearly shows that this was not the basis for denial of relief to Petitioners.

(b) It assumes relief was "mandated by a denial of Equal Protection." This is the entire issue - namely, is



there any denial of equal protection. The Seventh Circuit Court did not think so. (See Circuit Court's opinion, P. A1-43, 566 F.2d 30.) Respondents believe that that court's conclusion is in accord with ruling precedents (pp. 17 to 19, infra).

## STATUTES INVOLVED

There is only one statute involved. It is the "Consolidated First-Class Cities and Counties Act" adopted by the Indiana legislature in 1969 and subsequently amended (IC 18-4-1-1, et seq.). Many more provisions of the Act, as amended, impinge upon the issues raised other than the two quoted provisions in Petitioner's petition (P. 3-4). These additional provisions are set forth in Appendix III, A41-47, and will be referred to in the brief.

## STATEMENT OF THE CASE INCLUDING BASIS FOR JURISDICTION

Violation of the Equal Protection Clause of the Fourteenth Amendment was asserted in Plaintiffs' complaint.

The jurisdiction of this Court of the petition for writ of certiorari is not questioned.

The Seventh Circuit Court of Appeals fairly summarizes most of the essential facts (P. A2-8, 566 F.2d at 31-32). The parties stipulated the facts and that the court could take judicial notice of laws of the Indiana General Assembly for

government within Marion County prior to the Act here involved.

Indianapolis is the largest city in Indiana. The state capital is located in the city (App. I, A13). Legislation in Indiana has for decades divided municipal governments into classes based on population, consisting of cities from first to fifth class, ranging from the largest to the smallest, and towns. Indianapolis has been the only city of the first class. Classification was created for the purpose of providing structures to cope with problems created by the size of the community (cf. Burns' Ind. Stat., Vol. 9 [1963 Repl.], §48-1201).

In 1881, Article XIII, Section 1, was added to the Indiana Constitution which limited the indebtedness of municipal corporations to 2% of the assessed value of the taxable property in the corporation. By statute, property has been assessed at one-third of its true cash value, which has been approved as the base for the debt limitation.(4) The expansion of the scope of government activities over the years, together with rising costs of services, caused the legislature in Indiana to resort to other means than general obligation bonding for financing improvements since under the 2% limitation, general obligation financing was totally inadequate.

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(4) Allen v. Van Buren Township, 243 Ind. 665, 184 N.E.2d 25 (1962).



As a result, special taxing districts, authorities, and separate municipal corporations were set up to provide the needed additional financing capacity. So, municipal government in Indianapolis became diffused and uncoordinated by the addition of taxing districts, authorities, and separate municipal corporations with separate controlling bodies. Set out in Appendix II (A23-40) to this brief are the fourteen such units which complicated the functioning of municipal government in Indianapolis far beyond the simple structure of the Cities and Towns Act of 1905 which was the initial act (IC 18-1-1-1, et seq.). The 1969 Act brought most of these units into closer operating control of the consolidated city. (See under the headings "Changes Made by the Act," A23-40.)

The old City of Indianapolis lay wholly within Marion County and its boundaries had been expanded by annexation as shown on Map 9 from the stipulation which follows this page. But, the expansion of the city's boundaries had not kept up with the urbanization(5) of the county, as shown on Maps 10 and 11 from the stipulation which also follow this page. The problems of coordination and consolidation were further compounded by the existence within Marion County of the cities of Southport, Lawrence and Beech Grove and the town of

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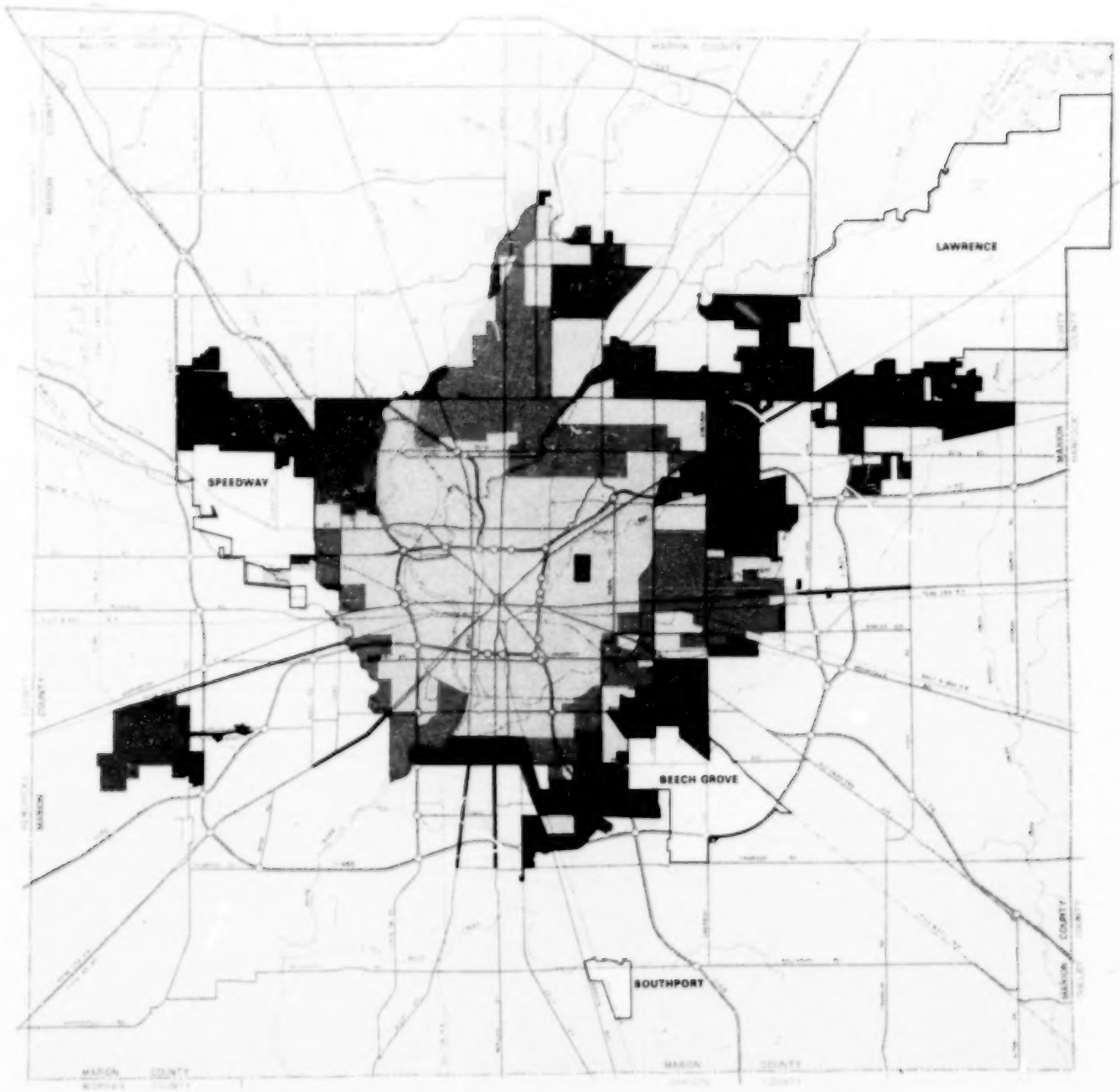
(5) Dortch v. Lugar, 255 Ind. 545, 550, 266 N.E.2d 25, 30 (1971).




# TERRITORIAL GROWTH OF INDIANAPOLIS 1900 TO 1972

## INDIANAPOLIS-MARION COUNTY, INDIANA

1900
1920
1940
1950
1960
1969
1972
OTHER CITIES AND TOWNS 1972

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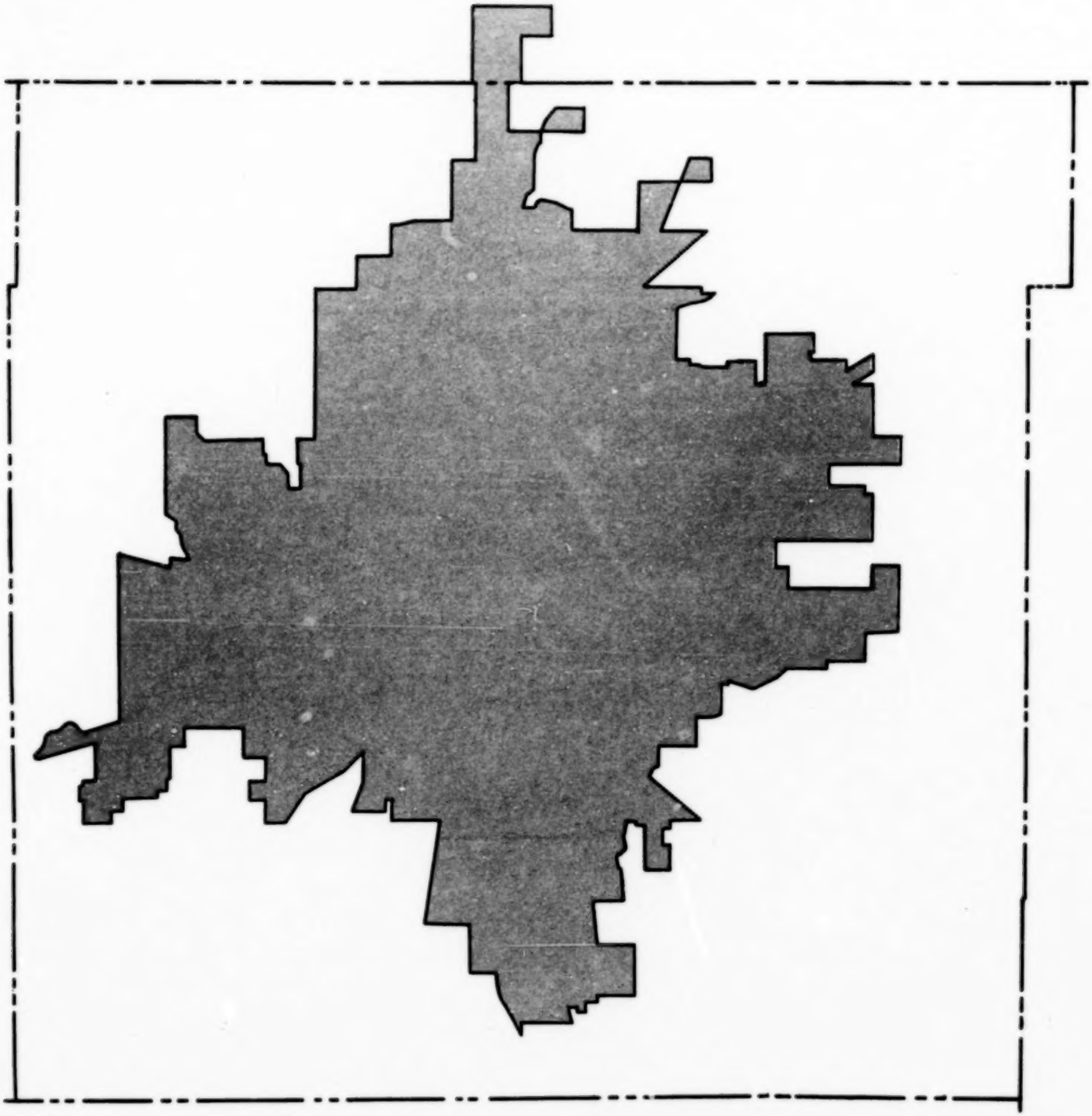

# THE BUREAU OF CENSUS URBANIZED AREA 1960

## INDIANAPOLIS–MARION COUNTY, INDIANA

SOURCE:
Urbanization estimated by Department
Staff based on U.S. Census Definition

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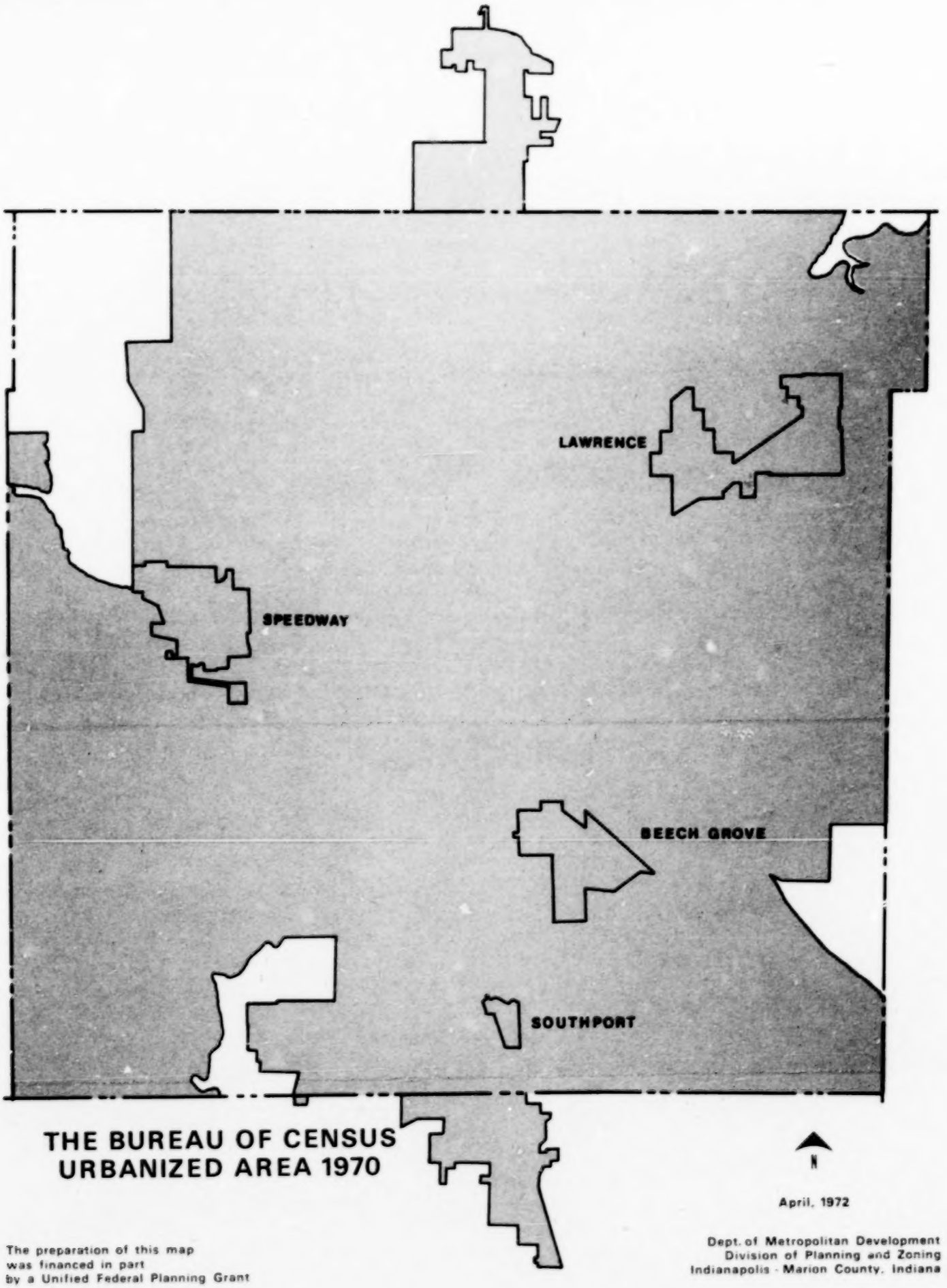


# THE BUREAU OF CENSUS URBANIZED AREA 1970

April, 1972

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Indianapolis - Marion County, Indiana

Speedway which had their own governments and police and fire departments. (See the white areas on Map 9, p. 8, supra.)

The Act adopted in 1969 was a response to the fact that the county had virtually become one urbanized area. (See Maps 10 and 11, pp. 9 and 10, supra.) Political unit boundaries in Marion County were the products of legislation and history. The Act was designed to coordinate and consolidate, to the extent politically and legally possible, civil government within Marion County.(6)

In addition to the almost total urbanization of the county, the economic unity of the county is apparent from the existing and projected interceptor sewers of the Indianapolis Sanitary District. (See Map 12 attached to stipulation lodged with the Clerk of the Court.) As will be noted from the map, the areas served in 1975 by the district shown in blue spill over the boundaries of the old City of Indianapolis. The land use maps (Maps 13, 14 and 15 attached to stipulation lodged with the Clerk of the Court) are a further demonstration of the fact that the economic characteristics of the use of land for industrial, commercial and residential purposes run countywide without regard to political boundaries.

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(6) Dortch v. Lugar, 255 Ind. 545, 550, 266 N.E.2d 25, 30 (1971).

Practical, political and constitutional considerations enter into all legislation. The cities of Lawrence, Southport, and Beech Grove and the town of Speedway were excluded (IC 18-4-1-2). The county sheriff's functions in the areas not within the police special service district or the excluded cities remained (IC 18-4-12-7). The sheriff's office is one established by the Indiana Constitution (Article VI, Section 2).

The 1969 Act was an effort to bring a higher degree of unity and cooperation into the chaotic situation in local government which existed in the essentially urbanized Marion County. The Act provided for not only a countywide consolidated city, except for the excluded cities and towns, but to the extent possible, it brought the county government and most of the fourteen separate units into the consolidated city-county government under the mayor, a city-county council, and the six departments set up by the Act (cf. App. II for the changes made by the Act and cf. IC 18-4-3-1 to 9 and IC 18-4-6-1 to 3).

Entirely new to the law of Indiana was the establishment of the police and fire special service district councils. Each council was given the limited power to approve its district's budget, and to make appropriations and tax levies (IC 18-4-4-5). The special service districts had no power to issue bonds (IC



18-4-3-13).(7) So, capital improvements for both the police and fire districts must be paid for out of current taxes or from bonds issued by the City of Indianapolis and amortized out of tax levies on all property in the consolidated city, not just the property in the special service districts but from the consolidated city as a whole. The capital budget for 1976-1977 of the Department of Public Safety contained requests for financing of improvements which would involve bonded indebtedness of the consolidated city. (See Stipulation Ex. P, p. DPS-2 and Ex. P, pp. 18-19, lodged with the Clerk of the Court.)

The Act moved in the direction of a more representative legislative branch. The Seventh Circuit described the change as follows:

> "Of the 29 members of the city-county council, one is elected from each of the 25 councilmanic districts

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(7) In Indiana the police and fire districts could not be given this power since police and fire services were traditional governmental functions, and to provide a separate debt capacity would be a circumvention of the constitutional debt limit. (See Cerajewski v. McVey, 225 Ind. 67, 72-73, 72 N.E.2d 650, 652-53 (1946); and Rappaport v. Department of Public Health, 227 Ind. 508, 517, 87 N.E.2d 77, 80-81 (1949).

and four are elected from the county at large.[2] (Ind. Code § 18-4-3-6.) The 25 districts are substantially equal in population[3] and no question is raised concerning their configuration or equality of population among them.

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2. The city-county council replaced a nine-member council elected at large from six councilmanic districts, with each political party entitled to one nominee from each district. At the general election each voter could cast a vote for nine persons, and the nine having the highest number of votes were elected members. (Ind. Code § 18-2-8-1 to 3.)

3. Population varies not more than one percent above or below the norm, based on 1970 Census Data."

(P. A5-6, 566 F.2d at 32)

The councils of such districts set up by the Act consisted of councilmen from single member councilmanic districts wholly within, or having at least 50% of their population within, such districts, plus the four councilmen elected at-large by the voters of the entire consolidated city. This resulted in sixteen members from specific councilmanic districts, nine wholly within and seven partially within and without but with 50% of their population within such districts (P. A6-7, 566 F.2d at 32).

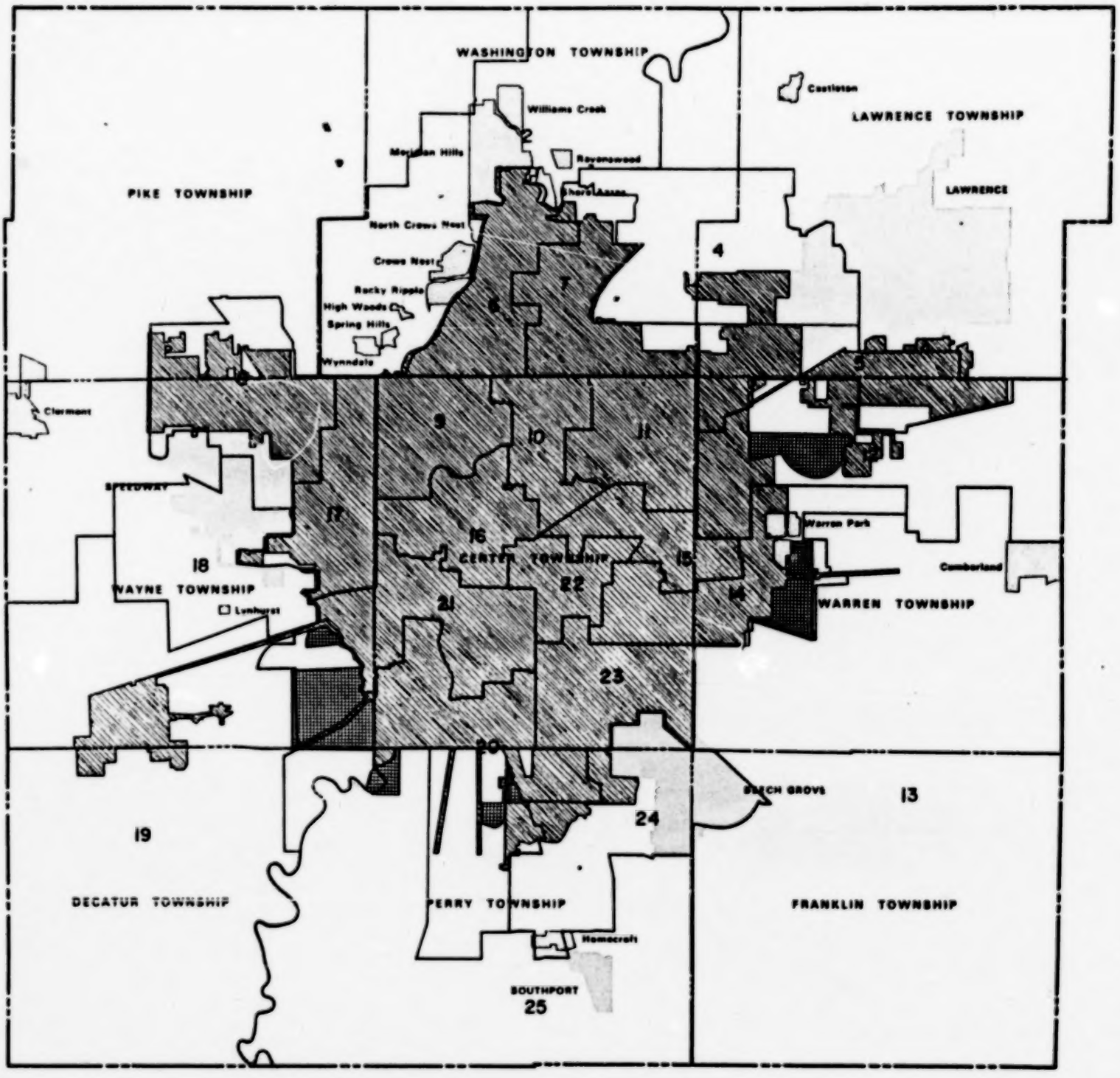


The map on the following page shows the units of government within the consolidated city and the councilmanic district boundaries (Map 5, App. 19, attached to the stipulation lodged with the Clerk of the Court).

The complaint in the district court challenged not only the right of the four at-large councilmen to sit on the special service district councils, but also the right of the seven councilmen whose districts were partially within and without. The challenge as to the seven was abandoned by Petitioners in the District Court (P. A18, 566 F.2d at 34, n. 7).

The Petitioners in their complaint also challenged the right of the Mayor to appoint the Director of the Department of Public Safety. The District Court held against the Petitioners (P. A98) and the Seventh Circuit affirmed the District Court's ruling (P. A36-37, 566 F.2d at 38-39). Petitioners have abandoned the issue in their petition (P. 9, n. 3). So, only the right of the four at-large councilmen to sit on the police and fire special service district councils is challenged in the petition before this Court.

The Petitioners' argument for granting the writ is placed upon two grounds. The first is that the Seventh Circuit's decision conflicts with the controlling decisions of this Court (P. 12). The second is that the case presents an issue not resolved by this Court (P. 19).




# UNITS OF GOVERNMENT
## INDIANAPOLIS-MARION COUNTY, INDIANA

- CONSOLIDATED CITY OF INDIANAPOLIS
- EXCLUDED CITIES AND TOWNS
- INCLUDED TOWNS
- COUNCILMANIC DISTRICT BOUNDARIES - 1974
- INDIANAPOLIS POLICE AND FIRE SERVICE DISTRICT
- INDIANAPOLIS EXTENDED POLICE SERVICE DISTRICTS

SOURCE: Consolidated Cities and Counties Act. Indiana Acts of 1969-Chapter 173.

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DECEMBER 20, 1972

The preparation of this map was financed in part by a Unified Federal Planning Grant

Dept. of Metropolitan Development
Division of Planning and Zoning
Indianapolis - Marion County, Indiana

Respondents take issue with both positions of Petitioners.

REASONS FOR NOT GRANTING THE WRIT

The following cases are the controlling decisions. The decision of the Seventh Circuit Court of Appeals under the stipulated facts is not in conflict with the decisions of this Court, but on the contrary is in harmony with those decisions.

The applicable decisions are set forth below.

The 1969 Act, as amended in 1971, is entitled to the presumption of constitutionality to which every duly enacted state law is entitled.

Lockport v. Citizens for Community Action, 430 U.S. 259, 272-73 (1977).

In Indiana, the law is that:

"Subordinate divisions of the government are but parts of the state goverment as a whole. The state, by its legislature, may abolish, consolidate, combine, eliminate or create new governmental corporations, or authorize such alterations to govern those who live in a given area. There is no constitutional guarantee for the continued existence of a governmental subdivision of the state. They are all creatures of the legislature."

Woerner v. City of Indianapolis, 242 Ind. 253, 266-67, 177 N.E.2d 34, 40 (1961) (emphasis supplied).

cf. Sailors v. Kent Board of Education, 387 U.S. 105, 107-08 (1967).

The principle was applied by the Supreme Court of Indiana in upholding the 1969 Act against a variety of constitutional challenges.

Dortch v. Lugar, 255 Ind. 545, 550, 560; 266 N.E.2d 25, 30, 35 (1971).

This Court has recognized that a state has wide discretion in forming and allocating powers to local units of government.

Lockport v. Citizens for Community Action, 430 U.S. 259, 269 (1977);
Abate v. Mundt, 403 U.S. 182, 185 (1971).

State acts such as this one are not stricken down unless there is invidious discrimination against some identifiable class.

Lockport v. Citizens for Community Action, 430 U.S. 259, 268 (1977);
McGowan v. Maryland, 366 U.S. 420 (1961);



Dusch v. Davis, 387 U.S. 112 (1967);
Salyer Land Co. v. Tulare Lake Basin Water Storage District, 410 U.S. 719 (1973);
Associated Enterprises v. Toltec Watershed Improvement District, 410 U.S. 743 (1973).

This Court has said that the ultimate question in this type of case is whether the recognition of differing interests justifies the classification.

Lockport v. Citizens for Community Action, 430 U.S. 259, 271 (1977).

Also compare:

Salyer Land Co. v. Tulare Lake Basin Water Storage District, 410 U.S. 719 (1973);
Associated Enterprises v. Toltec Watershed Improvement District, 410 U.S. 743 (1973).

The burden is upon Petitioners to demonstrate the invidious discrimination within the principles of law announced.

This Court has recognized the pressure upon local units of government and has said that the Federal Constitution is not a roadblock to new structures in government or to devising mechanisms of local government suitable for local needs.

Avery v. Midland County, 390 U.S. 474, 485 (1968);
Sailors v. Kent Board of Education, 387 U.S. 105, 109-11 (1967);
Dusch v. Davis, 387 U.S. 112, 117 (1967).

(a) The Court of Appeals' Decision is in Harmony with the Decisions of this Court.

As has been pointed out already, the Uni-Gov Act came into being as an effort to coordinate and consolidate local government in Marion County (p. 12, supra). The cases of Avery, Sailors and Dusch apply directly to this case. The Seventh Circuit cited and correctly applied these cases (P. A31-34; 566 F.2d at 37-38).

The legislature of Indiana created the special service districts. It need not have done so (P. A25; 566 F.2d at 36). As noted, it gave very limited powers to such districts. In composing the makeup of the special service district councils, the legislature provided for three groups of councilmen to sit on the councils: (a) councilmen whose councilmanic districts lay wholly within the special service districts, (b) councilmen of districts where 50% or more of the population resided within the special service districts, and (c) the four councilmen elected at-large by the voters of the consolidated city which comprises the entire county so long as 60% of the population of the county is encompassed in such districts (P. 3; IC 18-4-1-2(m) ). The result is that out of the 29 councilmen making up the city-county council, 20 are entitled to sit upon special service district councils. There are nine councilmen in class (a), seven in class (b) and four in class (c). The Seventh Circuit's opinion describes in detail the makeup of the special service district councils (P. A5-8; 566 F.2d at 32). The challenge here is only to the right of the four at-large, class (c), to sit on the special service district councils.



Given the presumption of constitutionality of the Act, the Petitioners did not discharge their burden of showing invidious discrimination against an identifiable class. On the contrary, the stipulated facts show that the legislature in providing that the four at-large should sit was recognizing the interests of an identifiable class. The county at the time of the adoption of the Act establishing Uni-Gov had become virtually one urbanized area with some small spillover into two adjacent counties. (See Map 11, p. 10, supra.) The interests of the residents of the county outside the special service districts are set forth in paragraph 21 of the stipulation of facts (App. I, A11-16, ¶ 21). A reading of paragraph 21 shows abundantly that the class of non-residents of the special service districts who are residents of the county have a real interest in the central area of the consolidated city. It is of real concern to them how the police and fire

forces of special service districts are financed and perform. They work, go to college, transact business, and own businesses in the special service districts. Cultural events and sports events take place there. Their most direct interest lies in the fact that capital improvements must be financed by bonds issued by the consolidated city since the special service districts have no power to so finance them. (See pp. 12-13, supra.) The Seventh Circuit recognized that interest (P. A20-21; 566 F.2d at 35).

There is reason for the four at-large to sit on the special service district councils. They represent the consolidated city as a whole which includes those who reside both within and without the special service districts; therefore, they can contribute a broad view to the coordination of functions essential to making the consolidated government work.

Actually, the residents of the special service districts pay directly on the property owned by them only a small portion of the taxes which support the police and fire special service district budgets - 9.3% and 12.6% of the respective budgets. (See n. 11, P. A22, 566 F.2d at 35.)

The Circuit Court of Appeals concluded, following a consideration of all the stipulated facts, as follows:



> "Accordingly, as a result of the economic and social, as well as political, interrelationships between the districts and the rest of the Uni-Gov territory, all residents of the county share a community of interests in the proper operation of the police and fire districts as well as the city-county government of which they are a part." (P. A23, 566 F.2d at 35-36)

Petitioners complain that the presence of the four at-large councilmen on the 20-member special service district councils dilutes their interest by 40%. They reach this conclusion upon the basis that the four at-large are elected from the constituency of the consolidated city, 60.8% of which reside within the special service districts and 39.2% outside such districts. (cf. Stipulation of Facts, App. I this brief, A5) Petitioners, however, are focusing only upon who elects the four at-large and not upon the effect of their presence upon the special service district councils. Presumably, the four at-large represent the entire constituency from which they are elected. The four at-large constitute 20% of the entire membership of twenty councilmen. Since the non-residents of the districts have only approximately a 40% voice in the election of the four at-large, the dilution of the representation is only 8% - i.e., 40% of 20% equals 8%. The Circuit Court took note of these contentions in footnote 13 and said:

"We think the latter approach [Respondents' stated above] is somewhat more realistic. Plaintiffs' [Petitioners'] approach not only ignores the fact that 60 percent of the constituents of the councilmen-at-large are residents of the special service districts but gives no weight to the ratio of councilmen-at-large to other special service district council members." (P. A31, 566 F.2d at 37)

The footnote goes on to point out that Plaintiffs (Petitioners) would make the same argument regardless of the number of councilmen from the councilmanic districts. The court concludes:

"It is enough to say that Uni-Gov residents outside the special service districts have been given a relatively minor voice in the election of members of the district councils." (P. A32; 566 F.2d at 37)

Petitioners refer to the comment of the dissenting judge in the Circuit Court to the effect that:

"The impact of this dilution is dramatically illustrated by the 1975 election returns. In the election for the four councilmen at large, the four candidates who received approximately 58% of the vote in the special service districts were not elected because they lost the other areas of the county by a larger margin than they carried the special service districts." (P. A39; 566 F.2d at 39)



The dissenting judge and the Petitioners ignore the fact that the result occurred simply because of the failure of residents of the special service districts to exercise their franchise. In the 1975 election, 25.3% of the persons residing within the special service districts voted, while 36.31% of those residing outside the districts voted. Had those residing within the districts gone to the polls in the same ratio as those residing outside the districts and voted as those who did vote voted, they would not only have elected the four at-large candidates of their choice, but they would also have elected three more of the single district councilmen.(8) The "function of losing elections" does not demonstrate a "built in bias" in the Act. Whitcomb v. Chavis, 403 U.S. 124, 152-53 (1971).

Petitioners suggest that the Seventh Circuit failed to follow Reynolds v. Sims, 377 U.S. 533 (1964) (P. 13). Reynolds was a legislative apportionment case involving districts with wide disparity in the number of residents. All of the cases of this Court relevant to

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(8) The vote for councilmen-at-large is set forth in App. I., A6-7. The basis for the statement is found in Exhibits A and E attached to the Stipulation lodged with the Clerk of the Court. Ex. A sets forth the population of the councilmanic districts and Ex. E sets forth the vote. The percentages of votes stated in the text were calculated from these exhibits.

the issues in this case were decided after Reynolds. (See pp. 17 to 20, supra.) In those cases, this Court has recognized that distinctive voter interests can be recognized without running afoul of the Equal Protection Clause.

(b) The Court of Appeals' Decision is not in Conflict with a Decision of Another Court of Appeals.

The decision in this case by the Seventh Circuit is not in conflict with another court of appeals decision. In fact, it is in harmony with Clark v. Town of Greenburgh, 436 F.2d 770 (2d Cir. 1971), as noted by the Court of Appeals in this case (P. A25-28, 566 F.2d at 36). It is also in harmony with Glisson v. Mayor and Councilmen of Town of Savannah Beach, 346 F.2d 135, 137 (5th Cir. 1965). (See P. A28, 566 F.2d at 37.)

THE HOLT CASE

Petitioners suggest to this Court that, since it has "granted review" of Holt Civic Club v. City of Tuscaloosa, No. 73-M-736 (N.D. Ala. June 7, 1977), appeal docketed, No. 77-515 (U.S. Oct. 3, 1977) postponing its consideration of the question of jurisdiction to the hearing of the case on the merits, the Court should, because of the pendency of Holt, grant certiorari in this case (P. 19-22).

Holt comes to this Court on appeal from a three judge court. It involves an Alabama statute giving any city in



Alabama police and sanitary jurisdiction over territory beyond the limits of the city. In the case of a city of 6,000 inhabitants and over, the jurisdiction extends for 3 miles, and for a smaller city or town, 1.5 miles beyond the city or town limits (Appendix to Appellants' Jurisdictional Statement filed in this Court at 6a, Holt). The police and sanitary authority over the outside territory is quite broad.(9) In Holt the appellants contend that it is a case of "government without representation" and that the three judge court decision is in conflict with Little Thunder v. State of South Dakota, 518 F.2d 1253 (8th Cir. 1975). The relief sought in Holt was termination of the extra territorial

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(9) "1. The ambit of the 'police or sanitary' ordinances is quite broad. It includes all building, gas, fire, electrical, and plumbing codes, inspection of food in restaurants and stores; prohibition of self-service gas stations; regulation of boardinghouses; traffic regulations; obscenity and nuisance ordinances; and prohibition of shooting galleries outside a small downtown area.

2. The licensing authority extends to all types of businesses, as well as cigarettes, tobacco products, wine, beer, and liquor. The license fees are limited to the amount reasonably necessary to cover the cost of the protection or regulation provided to the business or area, and may not be for general revenue purposes." (Jurisdictional Statement at 4, nn. 1 and 2, Holt.)

jurisdiction through a declaration of the unconstitutionality of the statute (Appellant's Jurisdictional Statement at 3-4, Holt).

The reason given by Petitioners for the granting of certiorari in this case because of the pendency of Holt is that this case involves "overinclusivity" on the grounds of claimed dilution of vote by the inclusion of at-large members on the district councils and Holt involves "underinclusivity" because the outside residents are not franchised.(10)

Holt and this case involve two entirely different questions. Petitioners' novel characterization of the two cases demonstrates that the cases are entirely different. The suggestion that the Court should grant certiorari in this case because of the pendency of the Holt appeal is without merit.

## CONCLUSION

Certiorari should not be granted in this case. The decision in this case by the Courts of Appeals is in harmony with the decisions of this Court and with the decisions of other Courts of Appeal. The Petitioners have not discharged their burden of showing invidious dis-

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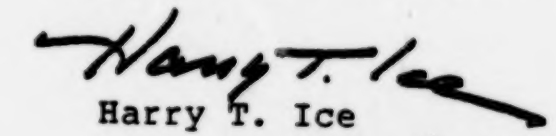
(10) The coined terms "overinclusivity" and "underinclusivity" are not found in any of the cases relevant to this case, nor are they to be found in Webster's Third New International Dictionary or Oxford English Dictionary.

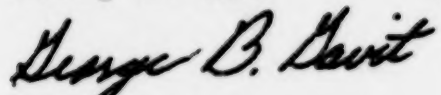


crimination to overcome the presumption of constitutionality of the Act.

Respectfully submitted,



Harry T. Ice



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Attorneys for Respondents

APPENDIX I

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

| | | |
|---|---|---|
| PAUL CANTWELL, GLEN HOWARD and ROZELLE BOYD, Plaintiffs, vs. WILLIAM H. HUDNUT, III, Mayor of Indianapolis, JOYCE BRINKMAN, GEORGE TINTERA, ALAN KIMBELL and PAULA HART, Members of the Indianapolis-Marion County City-County Council, Defendants. | ) | Cause No. IP 75-721-C |

S T I P U L A T I O N

Plaintiffs and Defendants hereby stipulate that the following facts, and those stated in or as shown upon all Exhibits and Maps attached hereto, may be accepted as if the same were established by competent proof upon the trial of this cause, subject only to the objection by

either Plaintiffs or Defendants to the relevancy or materiality of any part of the Stipulation, Maps or Exhibits.

1. Plaintiffs Cantwell, Howard and Boyd are all citizens of the United States, registered voters in Marion County, Indiana, and residents of the Police and Fire Special Service Districts which are defined in IC 18-4-1-2(l) and IC 18-4-15.5-1(p), and as established by IC 18-4-12-6(b) and IC 18-4-12-34(b).

2. William H. Hudnut, III, is and has been the Mayor of the City of Indianapolis and the Chief Executive Officer of the consolidated government for Indianapolis and Marion County, Indiana, since January 1, 1976. He was elected at the general election held on November 4, 1975, and is the successor to Richard G. Lugar in this action pursuant to F.R.C.P. 25(d). Defendants Tintera, Kimbell, Hart and Brinkman are the four "at-large" members of the Indianapolis-Marion County City-County Council elected at the general election held on November 4, 1975, each of whom represents the district consisting of the entire area of Marion County, pursuant to IC 18-4-3-6. Defendants Hart and Brinkman are successors in this action to former councilmen Roger Brown and John Ruckelshaus pursuant to F.R.C.P. 25(d).

3. The Court has original jurisdiction of the subject matter of this complaint under 28 U.S.C. §1343(3) and (4), and has jurisdiction of this suit if the facts establish a violation of 42



U.S.C. §1983. Venue in this Court is proper if jurisdiction of this suit is established.

4. The Court may take judicial notice of:

(a) the acts of the Indiana General Assembly which provided for the government of Marion County, and all units of government within Marion County before Chapter 173 of the Acts of the Indiana General Assembly for the year 1969, and of that act and of all such subsequent acts;

(b) published United States Census Bureau data and material; and

(c) the Municipal Code of the City of Indianapolis; the ordinances, resolutions and minutes of the City-County Council and of the Police Special Service District and the Fire Special Service District.

5. The following maps of Marion County are attached hereto, made a part hereof, and marked as Exhibits, as follows:

| Map | Description |
|---|---|
| 1 | Units of government, Indianapolis-Marion County, Indiana |
| 2 | Councilmanic District Map - 1970 |

3 Councilmanic District Map - 1975

4 1970 Census tracts

5 Units of government combined with Councilmanic Districts (Maps 1 and 3)

6 Units of government combined with census tracts (Maps 1 and 4)

7 1975 wards and precincts map

8 Taxing areas in Marion County - 1971

9 Territorial growth in Indianapolis -- 1900 to 1972

10 Bureau of Census urbanized area in 1960 -- Indianapolis-Marion County

11 Bureau of Census urbanized area in 1970 -- Indianapolis-Marion County

12 Sanitary District of City of Indianapolis

13 Existing land use, industrial -- Marion County

14 Existing land use, commercial -- Marion County

15 Existing land use, residential -- Marion County



6. The boundaries of the district which is served by the at-large members of the City-County Council are coterminous with the boundaries of Marion County, Indiana. The boundaries of the twenty-five single-member districts, as now existing, were established by an ordinance of the City-County Council. The ordinance, General Ordinance No. 28, 1974, was adopted by the City-County Council, June 17, 1974, and approved by the Mayor of the City of Indianapolis on June 19, 1974. Prior to the adoption of the aforesaid ordinance, John E. Rowe of the Bureau of the Census, by a letter dated June 3, 1974, had advised the members of the City-County Council of the population of the proposed districts, based upon the 1970 census, which were the districts finally established by the ordinance. A copy of said letter is attached and marked Exhibit A. The boundaries of the single-member districts, as established by the aforesaid ordinance, are as depicted on the Map attached and marked Map 3.

7. As of the 1970 census, 60.8 percent of the population of Marion County was located within the boundaries of the Police and Fire Special Service Districts. At no time since has the percentage of residents of the county within these districts exceeded that percentage. Attached as Exhibit B is a compilation of John E. Rowe of the Bureau of Census with a covering letter dated January 9, 1976, which shows the population of the twenty-five single-member districts as of the 1970 census.

It also shows the population of each such district within and without the Police Special Service District and the Fire Special Service District, and the population "split" between Councilmanic Districts as of the 1970 census.

8. The number of registered voters in each of the twenty-five single-member districts is shown upon Exhibits C and D attached, as of November 2, 1971 and November 4, 1975 respectively.

9. The vote for candidates for the Council from single-member districts, councilmen-at-large, and mayor for the 1971 and 1975 elections is shown upon Exhibit E attached.

10. The detail of the vote by wards within and without the Police Special Service District and the Fire Special Service District for councilmen-at-large in 1975, for terms commencing January 2, 1976, is shown upon Exhibit F attached. In summary Exhibit F shows the following as to the vote within the county as a whole, and within the Police Special Service District and the Fire Special Service District.

(a) Votes within the county as a whole:

| Democrats | Vote | Republicans | Vote |
|---|---|---|---|
| Beatty | 111,946 | Brinkman | 119,970 |
| Benedict | 112,704 | Hart | 119,264 |
| Bryant | 112,576 | Kimbell | 119,575 |
| Mahern | 112,697 | Tintera | 118,100 |



(b) Votes within the Fire Special Service District:

| Democrats | Vote | Republicans | Vote |
|---|---|---|---|
| Beatty | 69,387 | Brinkman | 48,787 |
| Benedict | 69,380 | Hart | 48,564 |
| Bryant | 69,898 | Kimbell | 48,603 |
| Mahern | 69,892 | Tintera | 48,082 |

(c) Votes within the Police Special Service District:

| Democrats | Vote | Republicans | Vote |
|---|---|---|---|
| Beatty | 70,347 | Brinkman | 49,869 |
| Benedict | 70,818 | Hart | 49,626 |
| Bryant | 70,874 | Kimbell | 49,678 |
| Mahern | 70,886 | Tintera | 49,141 |

The wards and precincts in the varous Concilmanic Districts appear upon Exhibit G attached and made a part hereof.

11. The wards and precincts in Marion County are shown upon the Map attached and marked Map 7, substantially as the same has existed since 1971, with minor changes of a few precinct lines.

12. Operating and Capital Improvement Budgets are adopted or approved by the City-County Council of the City of Indianapolis each year for the various units of government in the county. The budgets for the Police Special Service District and the Fire Special Service District are separate for operating expenses for the fiscal year of 1976, which include an estimate of revenues from all

sources of such districts and fix the tax levies. Attached hereto, made a part hereof, and marked as Exhibits, as indicated, are the budgets for the fiscal years 1975 and 1976 of the units of government as indicated:

| Exhibit | Description[1] |
|---|---|
| H | Fire Special Service District |
| | (1) Fiscal Ordinance No. 2 -- 1974 |
| | (2) Fiscal Ordinance No. 2 -- 1975 |
| I | Police Special Service District |
| | (1) Fiscal Ordinance No. 7 -- 1974 |
| | (2) Fiscal Ordinance No. 7 -- 1975 |
| J | City-County Annual Budget |
| | (1) Fiscal Ordinance No. 42 -- 1974 |
| | (2) Fiscal Ordinance No. 91 -- 1975 |
| K | County General Fund |
| | (1) Fiscal Ordinance No. 43 -- 1974 |
| | (2) Fiscal Ordinance No. 92 -- 1975 |

(1) The Exhibits are omitted. A copy of the Stipulation with all Exhibits attached has been lodged with the Clerk of the Court.



| | |
|---|---|
| L | Airport Authority |
| | (1) General Resolution No. 9 -- 1974 |
| | (2) General Resolution No. 11 -- 1975 |
| M | Library Board |
| | (1) General Resolution No. 10 -- 1974 |
| | (2) General Resolution No. 9 -- 1975 |
| N | Capital Improvements Board |
| | (1) General Resolution No. 11 -- 1974 |
| | (2) General Resolution No. 10 -- 1975 |
| O | Health and Hospital Corporation |
| | (1) General Resolution No. 12 -- 1974 |
| | (2) General Resolution No. 8 -- 1975 |
| P | Capital Improvements Budget 1976-1977 |
| Q | Budget Summary and Tax Levies |

13. The classes of property subject to property taxation in the Police Special Service District and Fire Special Service District and the assessed valuation of such property as of March 1, 1975 are shown on Exhibit R attached and made a part hereof.

14. The assessed valuation of all of the taxable property in Marion County and the indebtedness of all units of

government within the county, for the periods appearing on the Exhibit, are shown on Exhibit S attached and made a part hereof.

15. A letter of John E. Rowe of the Bureau of the Census to the Mayor of Indianapolis, dated January 27, 1976, is attached hereto, made a part hereof, and marked Exhibit T.

16. A letter of John E. Rowe of the Department of the Census to the Mayor of Indianapolis, dated January 19, 1976, is attached hereto, made a part hereof, and marked Exhibit U.

17. The present Director of Public Safety is Murrill E. Lowry who has occupied that office since May 20, 1974. Lowry was appointed by Mayor William H. Hudnut, III for a one year term in January, 1976. The appointment was submitted to the City-County Council on January 12, 1976, and the relevant portion of the minutes reflecting the action of that body is attached and marked Exhibit V. The insert, "No. 15," referred to in the minutes (Exhibit V) is attached and marked Exhibit W. The at-large members have consistently participated in the voting on the subject of confirmation by the Special Service District Councils since 1969.

18. Attached hereto and made a part hereof is a statement of Murrill E. Lowry, Director of the Department of Public Safety of the City of Indianapolis, which is marked Exhibit X.



19. The Court may take judicial notice of its opinion rendered February 3, 1970, in Bryant, et al v. Whitcomb, et al, No. IP 69-C-115, and of the final judgment in said cause entered March 6, 1970, and of City-County General Ordinance No. 48, all of which are attached to Plaintiffs' complaint as exhibits in this cause.

20. General Ordinance No. 48, 1970, referred to in paragraph 19 above, was codified as a part of the Municipal Code of the City of Indianapolis and appears in the Code as Section 2-48. Proposal No. 66, 1976, is to repeal General Ordinance No. 48, 1970, and is attached hereto, made a part hereof, and marked Exhibit Y. It was adopted by the City-County Council on March 8, 1976, was approved by the Mayor on March 15, 1976, and is City-County General Ordinance No. __, 1976.

21. No precise figures are available, but the ownership of the commercial and industrial businesses, operated in the form of proprietorships, partnerships, or closely held corporations, such as hotels, apartments, office buildings, commercial buidings, warehouses, automobile dealerships, specialty shops, furniture stores, appliance stores, service operations, and professional services, located within the Police Special Service District and the Fire Special Service District rests with individuals residing both within and outside of such districts, and within Marion County and some outside of the

County. Also, no precise figures are available, but residents residing both within and outside of the Police Special Service District and the Fire Special Service District and within Marion County hold substantial interests in the form of stock in corporations which have major investments in businesses located within such districts, such as Eli Lilly & Company, Indianapolis Power & Light Company, Indianapolis Water Company, Stokely-Van Camp, Inc., The Indiana National Bank, American Fletcher National Bank, Merchants National Bank & Trust Company, Inland Container Corporation, P. R. Mallory Corporation, Dura Containers, Hook Drugs, Inc., and others. Stock in such corporations is also held by persons residing outside of Marion County. In addition, there are many national corporations which have shareholders residing both within and outside of the Police Special Service District and the Fire Special Service District, both within and also outside of Marion County, such as the chains which own Ayres, Blocks and Wassons, and others such as Sears and Penneys, all of which own substantial taxable property within such districts. The same is true of General Motors Corporation, FMC Corporation, Radio Corporation of America, and the national food chains. All of the foregoing business enterprises have employees who live in Marion County, both within and without such Special Service Districts, and outside of Marion County.

Located within the Police Special Service District and the Fire Special Service District are:



(a) the State Capitol Building and the State Office Building;

(b) the City-County Building; and

(c) the Federal Post Office and Federal Office Building.

These buildings house officials and employees of the respective governments and various commissions, departments, and the courts of the respective jurisdictions. Residents from both within and outside of the Special Service Districts, and also from within and outside of the county, are employed in and transact business with the respective officials, employees, commissions, departments and courts housed in such buildings.

Located within the Police Special Service District and the Fire Special Service District are:

(a) the principal offices and branches of the banks in the county;

(b) the principal stores of the major department stores: Ayres, Blocks, Wassons, Penneys and Sears; and

(c) many other stores, offices and commercial establishments.

Residents from both within and outside the Special Service Districts, and also from within and outside of the county, are employed in offices, stores and commercial establishments, and customers from both within and outside of the Special Service Districts, and also from within and outside of the county, do business with such offices, stores and establishments.

Located within the Police Special Service District and the Fire Special Service District are:

(a) the Indiana Convention Center;

(b) the Market Square Arena;

(c) the Indiana State Fairgrounds; and

(d) many churches.

Persons living both within and outside of the Special Service Districts in Marion County, and also from within and outside of the county, attend conventions, events, games and services in the foregoing structures.

Located within the Police Special Service District and the Fire Special Service District are:

(a) Community Hospital of Indianapolis;



(b) the Indiana University Hospitals;

(c) Methodist Hospital of Indiana;

(d) University Heights Hospital;

(e) Veterans Administration Hospital;

(f) Westview Osteopathic Medical Hospital;

(g) Winona Memorial Hospital;

(h) Wishard Memorial Hospital.

Employees who work in these hospitals and the doctors who practice there, as well as the patients who are treated there, come from within and outside of the Special Service Districts, and also from within and outside of the county.

Located within the Police Special Service District and the Fire Special Service District are:

(a) Butler University;

(b) Christian Theological Seminary;

(c) Indiana University-Purdue University at Indianapolis;

(d) Indiana Central University; and

(e) Marian College.

The professors, instructors and employees who teach and work in these institutions, as well as the students attending, reside within and outside of the Special Service Districts, and also within and outside the county.

22. Attached and marked Exhibit Z is the Notice to Taxpayers of Marion County, given by the Auditor of Marion County, of the tax rates on the Tax Duplicates for the year 1974, payable in 1975.

23. In all actions related to the Indianapolis-Marion County City-County Council and the Special Service District Councils referred to herein, each of the Defendants has at all times acted in good faith and under claim of legal right, and in reliance upon the provisions of the legislative acts deemed to be applicable.

24. No contention is made in this action as to the constitutionality, or lack thereof, of the participation on Special Service District Councils by the sixteen members elected in single-member districts who now serve on said City-County Council.

25. Within ten (10) days of the completion of briefing, Plaintiffs and Defendants will make any written objections to the relevancy or materiality of any part of the Stipulation, the Maps, or the Exhibits, stating in such objec-



tions the reasons therefor. Response to the respective objections will be made in writing by the parties within five (5) days after the filing of objections. Prior to the argument of the cause, this Stipulation will be filed and the Court will rule upon the objections, if any, of the parties to the relevancy or materiality of any of the stipulated matters.

APPROVED this 8th day of March, 1976.

/s/ Edward O. Delaney
Edward O. Delaney
1313 Merchants Bank Building
Indianapolis, IN 46204
638-1313

/s/ Theodore S. Boehm
Theodore R. Boehm
810 Fletcher Trust Building
Indianapolis, IN 46204
636-4535

ATTORNEYS FOR PLAINTIFFS

/s/ Harry T. Ice
Harry T. Ice
George B. Gavit
Ice Miller Donadio & Ryan
10th fl., 111 Monument Circle
Indianapolis, IN 46204

ATTORNEYS FOR DEFENDANTS

## M A P S [2]

1 Units of government, Indianapolis-Marion County, Indiana

2 Councilmanic District Map - 1970

3 Councilmanic District Map - 1975

4 1970 Census tracts

5 Units of government combined with Councilmanic Districts (Maps 1 and 3)

6 Units of government combined with census tracts (Maps 1 and 4)

7 1975 wards and precincts map

8 Taxing areas in Marion County - 1971

9 Territorial growth in Indianapolis -- 1900 to 1972

10 Bureau of Census urbanized area in 1960 -- Indianapolis-Marion County

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(2) The Maps and Exhibits are omitted. A copy of the Stipulation with all Maps and Exhibits attached has been lodged with the Clerk of the Court.



11 Bureau of Census urbanized area in 1970 -- Indianapolis-Marion County

12 Sanitary District of City of Indianapolis

13 Existing land use, industrial -- Marion County

14 Existing land use, commercial -- Marion County

15 Existing land use, residential -- Marion County

## E X H I B I T S

A Letter of John E. Rowe of the Bureau of the Census dated June 3, 1974

B Letter of John E. Rowe of the Bureau of the Census dated January 9, 1976, with compilation attached.

C Schedule of registered voters in each single-member district as of November 2, 1971

D Schedule of registered voters in each single-member district as of November 4, 1975

E Vote from single-member districts for 1971 and 1975 elections

F Vote by wards in Special Service Districts for councilmen-at-large in 1975

G Wards and precincts in Councilmanic Districts

H Fire Special Service District
(1) Fiscal Ordinance No. 2 -- 1974
(2) Fiscal Ordinance No. 2 -- 1975

I Police Special Service District
(1) Fiscal Ordinance No. 7 -- 1974
(2) Fiscal Ordinance No. 7 -- 1975

J City-County Annual Budget
(1) Fiscal Ordinance No. 42 -- 1974
(2) Fiscal Ordinance No. 91 -- 1975

K County General Fund
(1) Fiscal Ordinance No. 43 -- 1974
(2) Fiscal Ordinance No. 92 -- 1975

L Airport Authority
(1) General Resolution No. 9 -- 1974
(2) General Resolution No. 11 -- 1975

M Library Board
(1) General Resolution No. 10 -- 1974



(2) General Resolution No. 9 -- 1975

N Capital Improvements Board
(1) General Resolution No. 11 -- 1974
(2) General Resolution No. 10 -- 1975

O Health and Hospital Corporation
(1) General Resolution No. 12 -- 1974
(2) General Resolution No. 8 -- 1975

P Capital Improvements Budget 1976-1977

Q Budget Summary and Tax Levies

R Classes of property and assessed valuation as of March 1, 1975 in Special Service Districts

S Assessed valuation of all taxable property and indebtedness of all units of government in Marion County

T Letter of John E. Rowe of Bureau of the Census dated January 27, 1976

U Letter of John E. Rowe of the Bureau of the Census dated January 19, 1976

V Minutes of City-County Council of January 12, 1976

W Proposal No. 29, 1976 approving appointment of Director of Public Safety

X Statement of Murrill E. Lowry, Director of the Department of Public Safety

Y Proposal No. 66, 1976, to repeal General Ordinance No. 48, 1970

Z Notice to taxpayers for the year 1974



# A P P E N D I X  II

## 1917 - DEPARTMENT OF PUBLIC SANITATION (IC 19-2-14-1, et seq.)

A special taxing district which is a department of the City.

Powers: To construct, maintain and operate sewers and sewage disposal plants; collect garbage, refuse and ashes; and prevent pollution.

Territorial area served: Originally, the City, and since 1943 any additional area served within the County (Stipulation Map 12).

Controlling body appointment: Board of Sanitary Commissioners; three members appointed by the Mayor of the City for staggered four-year terms.

Approvals required, other than by own controlling body:
Budgets - none.
Bond issues - none.

*Bonded indebtedness as of July 2, 1974: $84,330,500.
1974 tax rate: .802.

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* Source of Bonded Indebtedness and Tax Rate in each instance, Stipulation, Exhibits S and Z respectively.

Constitutionality upheld: Department of Public Sanitation v. Solan (1951) 229 Ind. 228, 97 N.E. 2d 495.

Changes made by the Act: All powers are now vested in the Director of the Department of Public Works who is appointed by the Mayor and confirmed by a majority vote of the City-County Council (18-4-3-4). The existing sanitary district remains a special taxing district with its current territory unchanged (18-4-9-2). Budget is approved by the Board of Public Works (18-4-9-3) and reviewed and approved by the City-County Council (18-4-4-4). The Board of Public Works consists of the Director of the Department of Public Works, two members appointed by the Mayor, and two members of the City-County Council for terms of one year, but at the pleasure of the appointing authority (18-4-3-12). Bond issues must be approved by the City-County Council (18-4-5-3).

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1919 - DEPARTMENT OF PUBLIC PARKS
(IC 19-7-30-1, et seq.)

A special taxing district which is a department of the City.

Powers: To construct, maintain and regulate the use of public parks, parkways and boulevards.

Territorial area served: Originally the City, and since 1963 the entire County.



Controlling body appointment: Board of Park Commissioners, four commissioners, two of whom are appointed by the Mayor of the City, and two of whom are appointed by the Board of Commissioners of the County. Commissioners serve four-year terms.

Approvals required, other than by own controlling body:
Budgets - by Common Council of the City.
Bond issues - none.

Bonded indebtedness as of July 2, 1974: $17,852,000.
1974 tax rate: .309.

Constitutionality upheld: Lurie v. City of Indianapolis (1964) 245 Ind. 457, 199 N.E. 2d 699.

Changes made by the Act: All powers, except with respect to parkways and boulevards, are now vested in the Department of Parks and Recreation (18-4-13-2) headed by a Director who is appointed by the Mayor and confirmed by majority vote of the City-County Council (18-4-3-4). The excepted powers are transferred to the Department of Transportation (18-4-13-2). The special taxing district remains in existence covering the same territory (18-4-13-2). Budget is approved by the Board of Parks and Recreation (18-4-13-3) and reviewed and approved by the City-County Council (18-4-4-4). The Board of Parks and Recreation consists of the Director of the Department of Parks and Recreation, two mem-

bers appointed by the Mayor, and two members by the City-County Council who serve terms of one year but at the pleasure of the appointing authority (18-4-3-12). Bond issues must be approved by the City-County Council (18-4-5-3).

° ° ° ° °

1929 - DEPARTMENT OF PUBLIC UTILITIES
(IC 19-3-24-1, et seq.)

A special taxing district which is a department of the City.

Powers: The department is given power by statute to manage and regulate all utilities (water, gas, electricity, telephone). At present, the department operates only gas facilities. Bonds payable solely out of revenue may be issued as well as special taxing district bonds.

Territorial area served: The City and additional area within the County.

Controlling body appointment: Five Trustees, two of whom are appointed by the Mayor of the City, two of whom are appointed by the Mayor of the City upon nomination by the Judge of the Circuit Court of the County, and one of whom is appointed by the Mayor of the City upon nomination of the Common Council of the City. The Board of Trustees nominates its successors for appointment by the Mayor. The seven members of the Board of Directors for Utilities are chosen by majority vote of the Board of Trustees.



Approvals required, other than by own controlling body:
Budgets - none.
Bond issues - none.

Bonded indebtedness as of July 2, 1974: $25,920,000 (revenue bonds).
1974 tax rate: none.

Legal comment: The gas utility property is held by the City as a public charitable trust. Todd v. Citizens' Gas Co. (7th Cir. 1931) 46 F. 2d 855.

Changes made by the Act: None, because of trust status.

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1937 - HOUSING AUTHORITY
(IC 18-7-11-1, et seq.)

A public body corporate and politic.

Powers: (1) To investigate living and housing conditions and to determine the location of slum areas and shortages of decent, safe and sanitary housing. (2) To acquire, prepare, lease and carry out housing projects to alleviate such conditions.

Territorial area served: The City and outside city limits within five miles thereof, but outside of any other incorporated city.

Controlling body appointment: Commissioners, five in number, appointed by the Mayor, who serve staggered four-year terms.

Approvals required, other than by own controlling body:
Budgets - none.
Bond issues - City Council.

Bonded indebtedness as of July 2, 1974: $11,900,000 (revenue bonds)
1974 tax rate: none.

Constitutionality upheld: Edwards v. Housing Authority (1939) 215 Ind. 330, 19 N.E. 2d 741.

Changes made by the Act: Commission remains and is appointed as before, but becomes Division of Housing in the Department of Metropolitan Development. Housing Administrator is Secretary and Executive Director of the Authority. Territory served remains the same. Housing Authority projects must be approved by the Metropolitan Development Commission (18-4-8-5).

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1937 - DEPARTMENT OF FLOOD CONTROL
(IC 19-4-21-1, et seq.)

A special taxing district which is a department of the City.

Powers: To construct and maintain levees, dams, reservoirs, etc. in



order to prevent floods and conserve water resources.

Territorial area served: All of the City and County.

Controlling body appointment: Five Commissioners, two of whom are the Civil Engineer of the City and the Surveyor of the County. Three other members are appointed by the Mayor of the City and serve at his pleasure.

Approvals required, other than by own controlling body:
Budgets - none.
Bond issues - none.

Bonded indebtedness as of July 2, 1974: $16,250,000.
1974 tax rate: .055.

Constitutionality upheld: Book v. Board of Flood Control Commissioners (1959) 239 Ind. 160, 156 N.E. 2d 87.

Changes made by the Act: All powers are now vested in the Director of the Department of Public Works who is appointed by the Mayor and confirmed by a majority vote of the City-County Council (18-4-3-4). The existing flood control district remains a special taxing district composed of the entire County (18-4-9-2(c) ). Budget approved by the Board of Public Works (18-4-9-3) and reviewed and approved by the City-County Council (18-4-4-4). The Board of Public Works consists of the Director of the Department of Public Works, two members

appointed by the Mayor, and two members of the City-County Council for terms of one year, but at the pleasure of the appointing authority (18-4-3-12). Bond issues must be approved by the City-County Council (18-4-5-3).

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1945 - DEPARTMENT OF REDEVELOPMENT
(IC 18-7-8-1, et seq.)

A special taxing district which is a department of the City.

Powers: To investigate, study and acquire blighted areas and clear and sell lands acquired to be redeveloped according to an approved plan.

Territorial area served: The City, but property within 1,000 feet of its corporate limits may be acquired.

Controlling body appointment: Five Trustees, three of whom are selected by the Mayor and two of whom are nominated by the President of the Common Council of the City. All serve staggered four-year terms. The Trustees select by majority vote five Commissioners who serve one-year terms.

Approvals required, other than by own controlling body:

Budgets - none, but Commission may expend only money advanced by the City, raised by special tax or bond issue.



Bond issues - by Mayor.

Bonded indebtedness as of July 2, 1974: $7,200,000.
1974 tax rate: .01.

Constitutionality upheld: Alanel Corp. v. Indianapolis Redevelopment Comm. (1958) 239 Ind. 35, 154, N.E. 2d 515.

Changes made by the Act: Powers transferred to the Metropolitan Development Commission (18-4-8-9(3) ). The Metropolitan Development Commission is composed of nine members, four appointed by the Mayor, three by the City-County Council, and two by the Board of County Commissioners (18-4-8-8). Bond issues must be approved by the City-County Council (18-4-5-3).

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1951 - HEALTH AND HOSPITAL CORPORATION
(IC 16-12-21-1, et seq.)

A municipal corporation.

Powers: (1) To prevent public health nuisances and disease through the supervision and regulation of domestic and commercial activity and the enforcement of health laws; and (2) to construct, equip and operate public hospitals.

Territorial area served: All of the City and County.

Controlling body appointment: Five Trustees who serve staggered four-year terms. Three Trustees are appointed by the Mayor. All three must be residents of the City. Two Trustees are appointed by the Board of County Commissioners and must be residents of the County but not the City. The Board of Trustees appoints an Executive Director, a Director of the Division of Public Health, and a Director of the Division of Public Hospitals, all of whom serve for four-year terms.

Approvals required, other than by own controlling body:
Budgets - none.
Bond issues - none.

Bonded indebtedness as of July 2, 1974: $14,540,000.
1974 tax rate: .850.

Constitutionality upheld: City of Indianapolis v. Buckner (1954) 233 Ind. 32, 116 N.E. 2d 507.

Changes made by the Act: Unaffected by the Act, but provision is made to foster cooperation between the Consolidated City and the Health and Hospital Corporation (18-4-11-1, and cf. 18-4-2-11).

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## 1953 - CITY-COUNTY BUILDING AUTHORITY (IC 19-8-4-1, et seq.)

A special authority.

Powers: To finance, construct and operate buildings for lease for the joint or separate use of any one or more of the governmental units within the County.

Territorial area served: All of the City and County.

Controlling body appointment: Five Trustees, one selected by the Mayor, one by the County Council, one by the Board of Commissioners of the County, one by the Judge of the Circuit Court, and one by the City Council. They serve staggered four-year terms. The Trustees, in turn, appoint by majority vote the five members of the Board of Directors who serve one-year terms.

Approvals required, other than by own controlling body:
Budgets - none.
Bond issues - none.

Bonded indebtedness as of July 2, 1974: $20,655,000 - payable out of lease rentals (which are paid from taxes) by the City and County for space in the City-County Building.
1974 tax rate: none.

Constitutionality upheld: Book v. Indianapolis-Marion Bldg. Authority (1955) 234 Ind. 250, 126 N.E. 2d 5.

Changes made by the Act: None, except the appointments to be made by the County Council go over to the City-County Council (18-4-4-4).

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1961 - AIRPORT AUTHORITY
(IC 19-6-2-1, et seq.)

A municipal corporation.

Powers: To acquire, construct, improve, equip, maintain, finance and regulate municipal airports.

Territorial area served: All of the County.

Controlling body appointment: Four board members, three appointed by the Mayor and one by the County Commissioners. Not more than two of the members appointed by the Mayor may belong to the same political party. Members serve staggered four-year terms.

Approvals required, other than by own controlling body:
Budget - City Council.
Bond issues - by Mayor, and if for second airport, also by County Council.



Bonded indebtedness as of July 2, 1974: $29,475,000 (special tax)
$119,000 (revenue)
1974 tax rate: .02.

Changes made by the Act: None, except that Council approvals referred to above would become the responsibility of the City-County Council.

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1965 - MARION COUNTY DRAINAGE BOARD
(IC 19-4-1-1, et seq.)

A special board consisting of the County Commissioners, the County Surveyor, and the City Engineer of Indianapolis..

Powers: The Board's authority is to vacate, maintain, reconstruct or construct drains used to eliminate surplus water from the land.

Territorial area served: The territorial jurisdiction is county-wide although many exemptions are set forth (19-4-5-1 to 6), including exempting drains constructed by a city or town which lie wholly or in part within the corporate limits of the city or town, unless the drain flows into a drain subject to the Drainage Board (19-4-5-4).

Controlling body appointment: The Commissioners and the Surveyor are

elected. The City Engineer is appointed by the Mayor.

Approvals required, other than by own controlling body:
Budget - City Council.
Bond issues - None, other than Board's for bonds payable from special assessments.

Bonded indebtedness as of July 2, 1974: none.
1974 tax rate: none.

Changes made by the Act: All powers and duties are transferred to the Department of Public Works which is vested with all authority over drainage (18-4-9-2(b).

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1965 - CAPITAL IMPROVEMENTS BOARD
(IC 18-4-17-1, et seq.)

A special authority.

Powers: To construct and operate capital improvements (in particular an exhibition center which will be of first priority) which will benefit cultural, commercial or civic interests.

Territorial area served: All of Marion County.

Controlling body appointment: Seven member board of managers. Five members are appointed by the Mayor, one



of whom must be in the hotel or motel business, and no more than three of whom may be of the same political party. The remaining two members are appointed by the Board of County Commissioners and may not be members of the same political party.

Approvals required, other than by own controlling body:
Budget - Mayor.
Bond issues - Exhibition center bonds are Marion County general obligation bonds subject to approval of the County Council and the Commissioners. The Mayor must approve any bonds payable from revenues rather than from property taxes.

Bonded indebtedness as of July 2, 1974: $15,500,000.
1974 tax rate: none.

Changes made by the Act: None (18-4-3-14).

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1967 - INDIANAPOLIS-MARION COUNTY PUBLIC LIBRARY
(IC 20-13-1-5, et seq.)

A municipal corporation.

Powers: To establish, finance, maintain, manage and operate library facilities and services.

Territorial area served: All of Marion County except the territory in Speedway and Beech Grove.

Controlling body appointment: Seven member board; two appointed by the County Commissioners, two by the Board of School Commissioners of the City of Indianapolis, and three by the Judge of the Circuit Court.

Approvals required, other than by own controlling body:
Budget -none.
Bond issues - none.

Constitutionality upheld: Datisman v. Gary Public Library (1960) 241 Ind. 83, 170 N.E. 2d 55.

Bonded indebtedness as of July 2, 1974: $2,975,000.
1974 tax rate: .243.

Changes made by the Act: None (18-4-3-14).

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1967 - MASS TRANSPORTATION AUTHORITY
(IC 19-5-3-1, et seq.)

A municipal corporation and a special taxing district for thoroughfare purposes (1969 amendment).

Powers: To plan, finance, construct and maintain thoroughfares, off-street parking facilities; and, pur-



suant to agreements with other governmental units, to plan, finance, construct and maintain roads or streets other than thoroughfares.

Territorial area served: All of Marion County.

Controlling body appointment: Five member board of directors, two appointed by the Mayor and three appointed by the County Council. All members serve at the discretion of the appointing authority. The board of directors appoints an executive director and must approve other major staff appointments.

Approvals required, other than by own controlling body:
Budget - County Council.
Bond issues - County Council.

Bonded indebtedness as of July 2, 1974: $25,245,000.
1974 tax rate: .101.

Changes made by the Act: All powers and duties are transferred to the Department of Transportation (18-4-10-3(c) ) and the Mass Transportation Authority ceases to exist as a municipal corporation (18-4-10-3).

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1973 - INDIANAPOLIS ECONOMIC DEVELOPMENT COMMISSION
(IC 18-6-4.5-1, et seq.)

A commission which is a department of the City.

Powers: To finance economic development or pollution control facilities through issuance of bonds of the City payable solely from lease rental of facility.

Territorial area served: The City.

Controlling body appointment: One by the Mayor and two by the City-County Council.

Approvals required, other than by own controlling body:
Budget - City-County Council.
Bond issues - City-County Council and Mayor.

Bonded indebtedness as of July 2, 1974: $12,000,000 (revenue bonds)
1974 tax rate: none.

Constitutionality upheld: (A prior act) Hawkins v. City of Greenfield (1967) 248 Ind. 593.



## APPENDIX III

### STATUTES INVOLVED

The following provisions of the 1969 Act are relevant to the question in this case and references are made to these provisions in the brief.

> "A 'special service district' of or operating in connection with the consolidated city shall be a district within the consolidated city or the county formed, created or authorized to be created under this article for the purpose of providing the property owners therein with a service or services; it shall be administered under the administrative structure of the consolidated city in accordance with this article, but shall be a separate body corporate, without, however, the power to issue general obligation bonds." (IC 18-4-1-2[1])

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> "At the time or times provided in Article XV [18-4-15-1, 18-4-15-2] of this act: a consolidated city which shall be a municipal body corporate shall be formed in each county (as defined herein); the consolidated city, its departments, special taxing districts and special service districts shall have the terri-

torial jurisdictions and the duties and powers provided in this act [18-4-1-1 - 18-4-15-2] and the first-class city shall be merged into the consolidated city and the first-class city shall be abolished as a separate entity." (IC 18-4-1-3)

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"The Mayor shall be the chief executive and administrative officer of the consolidated city . . . ." (IC 18-4-4-1)

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"The city-county council, subject to the limitations set out in this article . . . shall be the primary legislative body of the consolidated city. . . ." (IC 18-4-4-4)

At this point it should be noted that section IC 18-4-4-5 quoted by Petitioners (P. 4) provides one of the limitations on the power of the city-county council. Each special service district council is given power "to approve its budget and make appropriations and tax levies"; and it is further provided that "No special service district council shall have authority to originate or separately to adopt any other ordinance." (IC 18-4-4-5)

"Such special service district shall have no authority to issue bonds." (IC 18-4-3-13)



The Act set up six departments: administration, metropolitan development, public works, transportation, public safety, and parks and recreation. (IC 18-4-6-1) Directors were made the "chief administrative" officers of each department. (IC 18-4-6-3) The police and fire special districts are administered under the Department of Public Safety.

"The department of public safety shall be divided into five [5] divisions: (1) police, (2) fire, (3) weights and measures, (4) civil defense and (5) municipal dog pound. Except as hereinafter provided, the department shall, as of the effective date [January 1, 1970] of this act, be responsible for the management, operation and control of public safety in the consolidated city where such department exists and shall have all the powers of the board of public safety of the first-class city not otherwise distributed in this act [18-4-1-1 - 18-4-15-2]." (IC 18-4-12-2)

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"The director shall have the following general powers and duties and such other specific powers and duties as may be enumerated in this article [18-4-12-1 - 18-4-12-59]:

(1) To coordinate the activities of the department with the

sheriff and the coroner of the county.

* * *

(4) To make general and special rules and regulations for the government and discipline of the department.

* * *

(8) To divide the police special service district and fire special service district into police and fire districts.

* * *

(11) To appoint additional fire, police and civil defense protection forces on application of any person or corporation in any emergency, riot or insurrection as declared by the mayor. The director may remove persons so appointed at any time without hearing or notice or assigning any cause." (IC 18-4-12-5)

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"'Police Special Service District' shall mean a special service district in which the consolidated city police force created under this article [18-4-12-1 - 18-4-12-59] shall have jurisdiction. At the effective date [January 1, 1970] of this act



such police special service district shall be coterminous with the boundaries of the first-class city as the same existed on the day preceding the effective date of ths act, but may be expanded by the city-county council in accordance with this article. At the time that the boundaries of such police special service district become coterminous with the boundaries of the consolidated city, the police special service district may be dissolved by the director and such district shall be a department of the consolidated city." (IC 18-4-12-6[b])

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"The city-county council . . . shall be the primary legislative body of the consolidated city, shall have exclusive power to adopt budgets, to levy taxes . . . and to make appropriations required to be made for the consolidated city, (and) any of its departments. . . ." (IC 18-4-4-4)

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"(c) All ordinances or resolutions of the council shall be subject to the veto power of the mayor. . . ." (IC 18-4-5-2[c])

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"The director shall prepare and submit an annual budget to the special service district council which shall approve or modify said budget. The special service district council shall appropriate funds to finance the operations and activities of the consolidated city police force provided for in this article [18-4-12-1 - 18-4-12-59]. These appropriated funds shall be deposited with the consolidated city controller in an account known as the 'Consolidated City Police Force Account.' The director shall have authority to expend under regular consolidated city procedure in accordance with applicable law, all sums appropriated to said account for the purposes, activities and services contemplated by this article. At the end of each fiscal year any unexpended portion of said account shall revert to the police special service district general fund." [IC 18-4-12-11]

See IC 18-4-12-37 for a similar section covering the fire force budget.

The city-county council has the exclusive power to approve budgets of all departments. (IC 18-4-4-4 and 4.5)



"The director shall appoint a chief of the consolidated city police force who shall serve at the pleasure of the director." (IC 18-4-12-13)

All the control of the police force personnel through a merit board was vested in the Director of the Department of Public Safety, and the director prepares the budget for the police department. (IC 18-4-12-5 to 33)